

104TH CONGRESS  
2D SESSION

# S. 2174

To amend the Immigration and Nationality Act with respect to the admission of temporary H-2A workers.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1996

Mr. CRAIG introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act with respect to the admission of temporary H-2A workers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. CONSIDERATIONS IN THE APPROVAL OF H-2A**

4                       **PETITIONS.**

5       Section 218(a) (8 U.S.C. 1188(a)) of the Immigra-  
6       tion and Nationality Act is amended—

7               (1) by redesignating paragraph (2) as para-  
8       graph (3); and

9               (2) by inserting after paragraph (1) the follow-  
10       ing:

1           “(2) In considering an employer’s petition for  
2           admission of H–2A aliens, the Attorney General  
3           shall consider the certification decision of the Sec-  
4           retary of Labor and shall consider any countervail-  
5           ing evidence submitted by the employer with respect  
6           to the nonavailability of United States workers and  
7           the employer’s compliance with the requirements of  
8           this section, and may consult with the Secretary of  
9           Agriculture.”.

10 **SEC. 2. CONDITION FOR DENIAL OF LABOR CERTIFI-**  
11 **CATION.**

12           Section 218(b)(4) (8 U.S.C. 1188(b)(4)) of the Immi-  
13 gration and Nationality Act is amended to read as follows:

14           “(4) DETERMINATION BY THE SECRETARY.—  
15           The Secretary determines that the employer has not  
16           filed a job offer for the position to be filled by the  
17           alien with the appropriate local office of the State  
18           employment security agency having jurisdiction over  
19           the area of intended employment, or with the State  
20           office of such an agency if the alien will be employed  
21           in an area within the jurisdiction of more than one  
22           local office of such an agency, which meets the cri-  
23           teria of paragraph (5).

24           “(5) REQUIRED TERMS AND CONDITIONS OF  
25           EMPLOYMENT.—The Secretary determines that the

1 employer's job offer does not meet one or more of  
2 the following criteria:

3 “(A) REQUIRED RATE OF PAY.—The em-  
4 ployer has offered to pay H-2A aliens and all  
5 other workers in the occupation in the area of  
6 intended employment an adverse effect wage  
7 rate of not less than the median rate of pay for  
8 similarly employed workers in the area of in-  
9 tended employment.

10 “(B) PROVISION OF HOUSING.—

11 “(i) IN GENERAL.—The employer has  
12 offered to provide housing to H-2A aliens  
13 and those workers not reasonably able to  
14 return to their residence within the same  
15 day, without charge to the worker. The  
16 employer may, at the employer's option,  
17 provide housing meeting applicable Federal  
18 standards for temporary labor camps, or  
19 provide rental or public accommodation  
20 type housing which meets applicable local  
21 or state standards for such housing.

22 “(ii) HOUSING ALLOWANCE AS ALTER-  
23 NATIVE.—In lieu of offering the housing  
24 required in clause (i), the employer may  
25 provide a reasonable housing allowance to

1 workers not reasonably able to return to  
2 their place of residence within the same  
3 day, but only if the Secretary determines  
4 that housing is reasonably available within  
5 the approximate area of employment. An  
6 employer who offers a housing allowance  
7 pursuant to this subparagraph shall not be  
8 deemed to be a housing provider under sec-  
9 tion 203 of the Migrant and Seasonal Ag-  
10 ricultural Worker Protection Act (29  
11 U.S.C. 1823) merely by virtue of providing  
12 such housing allowance.

13 “(iii) SPECIAL HOUSING STANDARDS  
14 FOR SHORT DURATION EMPLOYMENT.—  
15 The Secretary shall promulgate special  
16 regulations permitting the provision of  
17 short-term temporary housing for workers  
18 employed in occupations in which employ-  
19 ment is expected to last 40 days or less.

20 “(iv) TRANSITIONAL PERIOD FOR  
21 PROVISION OF SPECIAL HOUSING STAND-  
22 ARDS IN OTHER EMPLOYMENT.—For a pe-  
23 riod of five years after the date of enact-  
24 ment of this section, the Secretary shall  
25 approve the provision of housing meeting

1 the standards described in clause (iii) in  
2 occupations expected to last longer than 40  
3 days in areas where available housing  
4 meeting the criteria described in subpara-  
5 graph (i) is found to be insufficient.

6 “(v) PREEMPTION OF STATE AND  
7 LOCAL STANDARDS.—The standards de-  
8 scribed in clauses (ii) and (iii) shall pre-  
9 empt any State and local standards gov-  
10 erning the provision of temporary housing  
11 to agricultural workers.

12 “(C) REIMBURSEMENT OF TRANSPOR-  
13 TATION COSTS.—The employer has offered to  
14 reimburse H-2A aliens and workers recruited  
15 from beyond normal commuting distance the  
16 most economical common carrier transportation  
17 charge and reasonable subsistence from the  
18 place from which the worker comes to work for  
19 the employer, (but not more than the most eco-  
20 nomical common carrier transportation charge  
21 from the worker’s normal place of residence) if  
22 the worker completes 50 percent of the antici-  
23 pated period of employment. If the worker re-  
24 cruited from beyond normal commuting dis-  
25 tance completes the period of employment, the

1 employer will provide or pay for the worker's  
2 transportation and reasonable subsistence to  
3 the worker's next place of employment, or to  
4 the worker's normal place of residence, which-  
5 ever is less.

6 “(D) GUARANTEE OF EMPLOYMENT.—The  
7 employer has offered to guarantee the worker  
8 employment for at least three-fourths of the  
9 workdays of the employer's actual period of em-  
10 ployment in the occupation. Workers who aban-  
11 don their employment or are terminated for  
12 cause shall forfeit this guarantee.

13 “(6) PREFERENCE FOR UNITED STATES WORK-  
14 ERS.—The employer has not assured on the applica-  
15 tion that the employer will provide employment to all  
16 qualified United States workers who apply to the  
17 employer and assure that they will be available at  
18 the time and place needed until the time the employ-  
19 er's foreign workers depart for the employer's place  
20 of employment (but not sooner than 5 days before  
21 the date workers are needed), and will give pref-  
22 erence in employment to United States workers who  
23 are immediately available to fill job opportunities  
24 that become available after the date work in the oc-  
25 cupation begins.”.

1 **SEC. 3. SPECIAL RULES APPLICABLE TO THE ISSUANCE OF**  
2 **LABOR CERTIFICATIONS.**

3 Section 218(c) (8 U.S.C. 1188(c)) of the Immigration  
4 and Nationality Act is amended to read as follows:

5 “(c) SPECIAL RULES APPLICABLE TO THE ISSUANCE  
6 OF LABOR CERTIFICATIONS.—The following rules shall  
7 apply to the issuance of labor certifications by the Sec-  
8 retary under this section:

9 “(1) DEADLINE FOR FILING APPLICATIONS.—  
10 The Secretary may not require that the application  
11 be filed more than 40 days before the first date the  
12 employer requires the labor or services of the H–2A  
13 worker.

14 “(2) NOTICE WITHIN SEVEN DAYS OF DEFI-  
15 CIENCIES.—

16 “(A) The employer shall be notified in  
17 writing within seven calendar days of the date  
18 of filing, if the application does not meet the  
19 criteria described in subsection (b) for approval.

20 “(B) If the application does not meet such  
21 criteria, the notice shall specify the specific de-  
22 ficiencies of the application and the Secretary  
23 shall provide an opportunity for the prompt re-  
24 submission of a modified application.

25 “(3) ISSUANCE OF CERTIFICATION.—

1           “(A) The Secretary shall provide to the  
2           employer, not later than 20 days before the  
3           date such labor or services are first required to  
4           be performed, the certification described in sub-  
5           section (a)(1)—

6                   “(i) with respect to paragraph  
7           (a)(1)(A) if the employer’s application  
8           meets the criteria described in subsection  
9           (b), or a statement of the specific reasons  
10          why such certification cannot be made, and

11                   “(ii) with respect to subsection  
12          (a)(1)(B), to the extent that the employer  
13          does not actually have, or has not been  
14          provided with the names, addresses and  
15          Social Security numbers of workers re-  
16          ferred to the employer who are able, will-  
17          ing and qualified and have indicated they  
18          will be available at the time and place  
19          needed to perform such labor or services  
20          on the terms and conditions of the job  
21          offer approved by the Secretary. For each  
22          worker referred, the Secretary shall also  
23          provide the employer with information suf-  
24          ficient to permit the employer to contact  
25          the referred worker for the purpose of re-



1 confirming the worker's availability for  
2 work at the time and place needed.

3 “(B) If, at the time the Secretary deter-  
4 mines that the employer's job offer meets the  
5 criteria described in subsection (b) there are al-  
6 ready unfilled job opportunities in the occupa-  
7 tion and area of intended employment for which  
8 the employer is seeking workers, the Secretary  
9 shall provide the certification at the same time  
10 the Secretary approves the employer's job  
11 offer.”.

12 **SEC. 4. EXPEDITED APPEALS OF CERTAIN DETERMINA-**  
13 **TIONS.**

14 Section 218(e) (8 U.S.C 1188(e)) of the Immigration  
15 and Nationality Act is amended to read as follows:

16 “(e) EXPEDITED APPEALS OF CERTAIN DETERMINA-  
17 TIONS.—The Secretary shall provide by regulation for an  
18 expedited procedure for the review of the nonapproval of  
19 an employer's job offer pursuant to subsection (c)(2) and  
20 of the denial of certification in whole or in part pursuant  
21 to subsection (c)(3) or, at the applicant's request, a de  
22 novo administrative hearing respecting the nonapproval or  
23 denial.”.

1 **SEC. 5. PROCEDURES FOR THE CONSIDERATION OF H-2A**  
2 **PETITIONS.**

3 Section 218 of the Immigration and Nationality Act  
4 (8 U.S.C. 1188) is amended—

5 (1) by redesignating subsections (f) through (i)  
6 as subsections (g) through (j), respectively; and

7 (2) by adding the following after subsection (e):

8 “(f) PROCEDURES FOR THE CONSIDERATION OF H-  
9 2A PETITIONS.—The following procedures shall apply to  
10 the consideration of petitions by the Attorney General  
11 under this section:

12 “(1) EXPEDITED PROCESSING OF PETITIONS.—  
13 The Attorney General shall provide an expedited  
14 procedure for the adjudication of petitions filed  
15 under this section, and the notification of visa-issu-  
16 ing consulates where aliens seeking admission under  
17 this section will apply for visas and/or ports of entry  
18 where aliens will seek admission under this section  
19 within 15 calendar days from the date such petition  
20 is filed by the employer.

21 “(2) EXPEDITED AMENDMENTS TO PETI-  
22 TIONS.—The Attorney General shall provide an ex-  
23 pedited procedure for the amendment of petitions to  
24 increase the number of workers on or after five days  
25 before the employers date of need for the labor or  
26 services involved in the petition to replace referred

1 workers whose continued availability for work at the  
2 time and place needed under the terms of the ap-  
3 proved job offer can not be confirmed and to replace  
4 referred workers who fail to report for work on the  
5 date of need and replace referred workers who aban-  
6 don their employment or are terminated for cause,  
7 and for which replacement workers are not imme-  
8 diately available pursuant to subsection (b)(6).”.

9 **SEC. 6. LIMITATION ON EMPLOYER LIABILITY.**

10 Section 218(g) (8 U.S.C. 1188(g)) of the Immigra-  
11 tion and Nationality Act is amended—

12 (1) by redesignating paragraph (2) as para-  
13 graph (2)(A); and

14 (2) by inserting after paragraph (2)(A) the fol-  
15 lowing:

16 “(B) No employer shall be subject to any liabil-  
17 ity or punishment on the basis of an employment ac-  
18 tion or practice by such employer that conforms with  
19 the terms and conditions of a job offer approved by  
20 the Secretary pursuant to this section, unless and  
21 until the employer has been notified that such cer-  
22 tification has been amended or invalidated by a final  
23 order of the Secretary or of a court of competent ju-  
24 risdiction.”.

1 **SEC. 7. LIMITATION ON JUDICIAL REMEDIES.**

2 Section 218(h) of the Immigration and Nationality  
3 Act (8 U.S.C. 1188(h)) is amended by adding at the end  
4 thereof the following:

5 “(3) No court of the United States shall have  
6 jurisdiction to issue any restraining order or tem-  
7 porary or permanent injunction preventing or delay-  
8 ing the issuance by the Secretary of a certification  
9 pursuant to this section, or the approval by the At-  
10 torney General of a petition to import an alien as an  
11 H-2A worker, or the actual importation of any such  
12 alien as an H-2A worker following such approval by  
13 the Attorney General.”.

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